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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

12 SHELLEY R. ROBINSON; and  
13 ELIZAVETA M. HUNSINGER, by and  
through her Conservator IVAN J.  
HUNSINGER

Case No. C 07-03258 SC

14 | Plaintiffs.

15 | v.

16 DAIMLERCHRYSLER AG;  
17 DAIMLERCHRYSLER MOTORS  
18 COMPANY LLC; DAIMLERCHRYSLER  
CORPORATION; and DOES ONE through  
FIFTY, inclusive.

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT DAIMLER AG's RENEWED  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION, OR, IN THE  
ALTERNATIVE, REQUEST TO ALLOW  
JURISDICTIONAL DISCOVERY**

Date: March 7, 2008  
Time: 10:00 a.m.  
Courtroom: 1  
Judge: Hon. Samuel Conti

Complaint Filed: 6/20/07  
Trial Date: 1/12/09

21 | INTRODUCTION

22 This case stems from a motor vehicle accident involving a 1998 Jeep Cherokee. Daimler  
23 AG maintains, and Plaintiffs have no evidence to the contrary, that Chrysler Corporation  
24 designed, manufactured, and distributed the subject vehicle. However, Daimler AG overlooks a  
25 claim made by Plaintiffs in this case that the defendants were negligent during the time period

1 after the distribution and initial sale of the subject vehicle, for not giving the customers an option  
2 of retrofitting their vehicles with electronic stability control. In 1998 Daimler-Benz "merged"  
3 with Chrysler, forming a corporation named "DaimlerChrysler AG", which in 2007 became  
4 Daimler AG. For the purposes of this motion, the relevant inquiry is whether or not  
5 DaimlerChrysler AG had sufficient minimum contacts to establish specific personal jurisdiction  
6 over them during the time period from 1998 to the time of the subject accident.

7 Daimler AG also overlooks the "agency" theory, through which the minimum contacts of  
8 a subsidiary entity can be imputed to the foreign parent entity. The cases cited by Daimler AG  
9 deal with the "alter-ego" theory, which is not the exclusive theory through which minimum  
10 contacts can be established for a foreign parent company, and it is completely inapplicable to  
11 DaimlerChrysler Motors Company LLC because that entity is not a corporation.

12 Under the "agency" theory, the minimum contacts of DaimlerChrysler Corporation and  
13 DaimlerChrysler Motors Company LLC are imputed to their parent company, DaimlerChrysler  
14 AG. Those two American entities were, in reality, the Chrysler division, or Chrysler branch, of  
15 DaimlerChrysler AG. They were agents for DaimlerChrysler AG engaging in activities that, but  
16 for their existence, DaimlerChrysler AG would have to undertake itself. DaimlerChrysler AG  
17 was a merged corporation from former Chrysler Corporation and Daimler-Benz AG, converting  
18 the shares of both predecessor corporations to DaimlerChrysler AG, and combining the two prior  
19 corporate functions into one. DaimlerChrysler AG created a management structure consisting of  
20 a Supervisory Board, and a Board of Management, that had the responsibility for managing both  
21 the Mercedes division and the Chrysler division. While the "Chrysler division" maintained its  
22 physical location Michigan, the management of this division, and the hiring of executives in  
23 Michigan, was done by the Board of Management of DaimlerChrysler AG.

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1        **II. FACTS**

2            **A. The formation of DaimlerChrysler AG**

3            DaimlerChrysler AG was formed in 1998, as a result of the merger between  
4 Daimler-Benz AG and Chrysler Corporation that closed on November 12, 1998. As a result of  
5 the Merger, all shareholders of Chrysler Corporation and all shareholders of Daimler-Benz AG  
6 became shareholders of the new company, DaimlerChrysler AG. Chrysler Corporation's  
7 shareholders received approximately 42% of DaimlerChrysler AG outstanding shares and  
8 Daimler-Benz AG shareholders received approximately 58% of those shares. (See Tracinda  
9 Corp. v. DaimlerChrysler AG (D. Del. 2005) 364 F.Supp.2d 362, 380).

10           **B. The Supervisory Board**

11           In accord with German law, DaimlerChrysler AG had a two tier system consisting of a  
12 Supervisory Board and a Management Board. The Supervisory Board appointed and removed  
13 members of the Management Board, oversaw the management of the company, and was  
14 ultimately responsible for significant corporate transactions like major asset sales and  
15 acquisitions. From the time the Merger was completed, through and including November 27,  
16 2000, half of the shareholder representatives on the DaimlerChrysler AG Supervisory Board were  
17 those originally designated by Chrysler Corporation and half of the shareholder representatives  
18 were those originally designated by Daimler-Benz AG. (See Tracinda Corp. 364 F.Supp.2d 362,  
19 380-381).

20           **C. The Board of Management**

21           In contrast to the Supervisory Board, the Management Board managed the daily  
22 operations of the company. The DaimlerChrysler AG Management Board initially consisted of  
23 18 members, ten of whom were designated by Daimler-Benz AG, and eight of whom were  
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1 designated by Chrysler Corporation. The Management Board functioned as a board of equals  
2 with collective responsibility for the operations of the company. (See Tracinda Corp, 364  
3 F.Supp.2d 362, 381).

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5 **D. Operating Structure of DaimlerChrysler AG**

6 DaimlerChrysler AG maintained two operational headquarters, one located at the former  
7 Chrysler Corporation headquarters in Auburn Hills, Michigan and the other at the former  
8 Daimler-Benz AG headquarters in Stuttgart, Germany. The overlapping corporate functions of  
9 Daimler-Benz AG and Chrysler Corporation were combined. (See Tracinda Corp, 364 F.Supp.2d  
10 362, 382).

11 Chrysler Corporation was renamed to DaimlerChrysler Corporation, which became a  
12 subsidiary of DaimlerChrysler Motors Company LLC (formerly DaimlerChrysler Motors  
13 Corporation) (See Declaration of Louann Van Der Wiele at ¶¶ 8-12). In 2000, Dieter Zetsche  
14 was appointed by the Board of Management of DaimlerChrysler AG to be the CEO of  
15 DaimlerChrysler Corporation, after the Management Board terminated his predecessor. (See  
16 Tracinda Corp, 364 F.Supp.2d 362, 384-386). The Chrysler brands were kept together in a  
17 separate, independent unit of DaimlerChrysler AG and the Daimler brands were similarly  
18 separated. Chrysler was referred to in financial reports, in internal memoranda, in shareholder  
19 meetings, and in press releases as a "division" of DaimlerChrysler AG. DaimlerChrysler  
20 Corporation and DaimlerChrysler Motors Company LLC constituted a U.S. division of  
21 DaimlerChrysler AG where vehicle design, procurement, production, and marketing was  
22 overhauled through the management of the DaimlerChrysler AG Board of Management. (See  
23 Tracinda Corp, 364 F.Supp.2d 362, 382-383, 387).

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1           **III. ARGUMENT**

2           **A. This Court has specific personal jurisdiction over Daimler AG through the**  
 3           **contacts of DaimlerChrysler Motors Company, LLC, which acted as an**  
 4           **agent of DaimlerChrysler AG.**

5           Due process requires that the defendant have certain minimum contacts with the forum  
 6           state such that the maintenance of the suit does not offend the traditional notions of fair play and  
 7           substantial justice. International Shoe Co. v. Washington (1945) 326 U.S. 310, 316. The  
 8           minimum contacts of a nonresident's agents are ordinarily imputed to the principal. See Ochoa v.  
 9           J.B. Martin & Sons Farms, Inc. (9<sup>th</sup> Cir. 2002) 287 F.3d 1182, 1189. In the context of a parent-  
 10          subsidiary relationship, an agency relationship is established for jurisdictional purposes if the  
 11          plaintiff makes a "prima facie showing that the subsidiary represents the parent corporation by  
 12          performing services 'sufficiently important to the parent corporation that if it did not have a  
 13          representative to perform them, the parent corporation would undertake to perform substantially  
 14          similar services.' The agency test permits the imputation of contacts where the subsidiary was  
 15          'either established for, or is engaged in, activities that, but for the existence of the subsidiary, the  
 16          parent would have to undertake itself.'" Harris Rutsky & Co. Ins. Services, Inc. v. Bell &  
 17          Clements Ltd (9<sup>th</sup> Cir. 2003) 328 F.3d 1122, 1135 (quoting Chan v. Society Expeditions, Inc. (9<sup>th</sup>  
 18          Cir. 1994) 39 F.3d 1398, 1405-1406; Wells Fargo & Co. v. Wells Fargo Express Co. (9<sup>th</sup> Cir.  
 19          1977) 556 F.2d 406, 422-424; and Gallagher v. Mazda Motor of America, Inc. (E.D.Pa. 1992)  
 20          781 F.Supp. 1079, 1083); see also Meier ex rel. Meier v. Sun Intl. Hotels, Ltd. (11<sup>th</sup> Cir. 2002)  
 21          288 F.3d 1264, 1275.

22           During the time period between 1998 and the subject accident, DaimlerChrysler  
 23          Corporation and DaimlerChrysler Motors Company LLC were engaged in activities that, but for  
 24          their existence, DaimlerChrysler AG would have to undertake itself. DaimlerChrysler AG was a  
 25          merged entity that combined the corporate functions of Daimler-Benz AG and Chrysler  
 26          Corporation, wherein the daily operations of DaimlerChrysler AG were managed by its Board of

1 Management, which was composed of former executives from Daimler-Benz AG and Chrysler  
2 Corporation. Shares of both Chrysler Corporation and Daimler-Benz AG were converted to  
3 shares of DaimlerChrysler AG. As part of this "merger", new entities were created to run the  
4 operational headquarters in Michigan according to the orders and direction of DaimlerChrysler  
5 AG. These entities, known as the "Chrysler Group", were DaimlerChrysler Corporation and  
6 DaimlerChrysler Motors Company LLC (formerly DaimlerChrysler Motors Corporation). The  
7 Board of Management of DaimlerChrysler AG had the power to terminate and appoint  
8 executives, including the CEO of DaimlerChrysler Corporation, which they did when they  
9 appointed Dieter Zetsche as CEO, and terminated his predecessor. The "Chrysler Group", was a  
10 branch or division of DaimlerChrysler AG. They were referred to as a "division" of  
11 DaimlerChrysler AG in financial reports, internal memoranda, shareholder meetings, and in press  
12 releases. DaimlerChrysler AG, through its Board of Management, overhauled the Chrysler  
13 Group in their vehicle design, procurement, production, and marketing. DaimlerChrysler AG  
14 owned the Chrysler Group in whole, it managed the Chrysler group through the DaimlerChrysler  
15 AG Board of Management, and it controlled the Chrysler Group as its own division. But for the  
16 creation of DaimlerChrysler Corporation and DaimlerChrysler Motors Company LLC, all of the  
17 operations of the former Chrysler headquarters in Michigan would have to be performed by  
18 DaimlerChrysler AG, and most of them in fact were. (See Tracinda Corp. v. DaimlerChrysler AG  
19 (D. Del. 2005) 364 F.Supp.2d 362 (attached as Exhibit 1 to Van Blois Decl.).

20 The cases cited by Defendant, U.S. Vistor and Von Grabe, do not address the agency  
21 issue, but rather address the "alter-ego" theory of jurisdiction. Under theory, a plaintiff can  
22 overcome the "presumption of corporate separateness" and "piece the corporate veil" to get to  
23 the parent. However, the alter-ego theory is not applicable to DaimlerChrysler Motors Company  
24 LLC because that entity is not a corporation. More important, the alter-ego theory is not  
25 exclusive, and the minimum contacts of a subsidiary can be imputed to its parent company under  
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the agency theory.

Asserting jurisdiction of DaimlerChrysler AG in this case would not offend the traditional notions of fair play and substantial justice. This parent company completely controlled and dominated the affairs of their "division" called the Chrysler Group. DaimlerChrysler AG managed and directed the Chrysler Group, through which they were allowed to reap the benefits of their marketing, distribution, and presence in the U.S. DaimlerChrysler AG cannot now complain of being subject to suit here.

**B. In the alternative, this Court should allow Plaintiffs to conduct discovery limited to jurisdictional issues.**

Without the benefit of having conducted any discovery, without the knowledge of how decisions were made regarding the defendants' use and non-use of electronic stability control in Chrysler vehicles, and without access to defendants' records and witnesses related to the jurisdictional issues presented in the motion, Plaintiffs are slightly handicapped in their ability to oppose Defendant's motion. To the extent that there is issue regarding the adequacy of the documents submitted in support of this opposition, or to the extent that additional information is necessary to make out a prima facie case of a principal-agent relationship, Plaintiffs should be permitted to conduct discovery limited to jurisdictional issues.

#### IV. CONCLUSION

For the above reasons, Defendant Daimler AG's motion to dismiss should be denied, or, in the alternative, the hearing of this matter should be continued approximately 60 days to permit discovery on jurisdictional issues.

Dated: February 15, 2008

## VAN BLOIS & ASSOCIATES

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Attorneys for Plaintiffs